

A Critical Analysis of the Capacity of the Retributive Justice system to mitigate the Issues of Recidivism among Drug Offenders in Sri Lanka

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Abstract: In the past, many societies have chosen drugs whose use was incorporated strictly in social rituals; the abuse of those drugs became a severe public health problem in this modern society. It is not restricted to a particular society or region but affects all nations and communities. Many of these discovered drugs have severe dependence liability and brought the problem of addiction into a new dimension. All the countries aspire to curb narcotic drug use, and they utilize retributive justice mechanisms to achieve their target. This study has focused on the research problem as the incidence of recidivism amongst convicted drug-related offences. It has been subjected to the domestic retributive mechanism that has been used increasingly in Sri Lanka, and those who were a lower class of society have become recidivists under the existing retributive justice. The study has focused on the efficacy of domestic retributive justice in dealing with recidivism amongst drug offenders in Sri Lanka. The present study selected 100 drug offenders and ten prison officers through a convenient sample from *Mahara* prison in Sri Lanka. For data collection, unstructured interviews were used concerning both drug offenders and prison officers. The study's finding reveals that most drug offenders were introduced to drugs by their friends or family members.

Further, it was revealed that most of the drug offenders belonged to the lower-income group, and they were living in tiny houses like slums and flats with minimum facilities. These residential places are centres of distribution of drugs and other crimes, and many people were under pressure from their colleagues to follow this criminal way of life. According to the findings of the study legal framework presently in place in Sri Lanka has not created a sufficient ratio of provisions to reduce recidivism amongst drug offenders. The study recommends utilising structured rehabilitation programs for the first-time offenders while reintegration programs before release drug offenders to society.

I. INTRODUCTION

Drugs are, have been and continue to be, a menace that has plagued society from time immemorial (Fischer; Tschurennev, 2014). Mankind has always looked for substances to get intoxicated by and induce highs by external stimuli. The present circumstances relating to drugs in Sri Lanka are no different in prevalence in comparison to that which was in history. However, the incidence of drug abuse and re-abuse is rampant and this in turn has come to detriment the social fabric of Sri Lanka drastically (Jayasuriya, 1995). This phenomenon is seen clearly in the rates of addiction and

relapse in the use of drugs and psychotropic substances especially among the youth (Wijesiri, 2018).

Sri Lanka boasts of a legal history that is on par with some of the advanced and major jurisdictions amongst the countries in the developed world. Sri Lanka like most countries has both retributive and restorative justice mechanisms in dealing with offenders and criminals alike (Ladduwahetty, 2017). However, there is a greater emphasis on the retributive justice mechanism in Sri Lanka in comparison to the restorative justice mechanism. This means that the country's legal mechanism for the mitigation and prevention of crime is heavily dependent on the theories of punishment as opposed to efforts for corrections (Hare, 1986). This is evident in the drive initiated by the former president of the Democratic Socialist Republic of Sri Lanka to reimplementation of the death penalty for offenses associated to drugs (Lakshman, 2019).

Yet, the statistics throughout history has shown us, as it does at present, that the incidence of recidivism amongst persons convicted for offenses associated to the use of drugs has been starkly high and this is indicative of an overall failure of the preferred criminal justice mechanism adopted by Sri Lanka (Aluthge, 2015). Such recidivism is attributable to not only the criminal justice system in itself but other social and environmental factors as well. As evident in the post general election era period of 2020, it has been made quite clear that the elements within the criminal justice system in it have proven the kicking of the drug related habits rather difficult as such elements that are internal to the criminal justice system such as the prison officers who facilitate this social menace.

The research is of the understanding that, given the national dynamics in Sri Lanka at present regarding the drug problem and the national initiative to combat it, this research that is conducted is very timely because it not only addresses an ongoing problem but also seeks to complement the widespread national efforts that are underway. The research carried out by the researcher is an attempt at critically study at the failure of the domestic retributive justice mechanism in Sri Lanka in the mitigation of recidivism amongst drug offenders in Sri Lanka and thereby look for more sustainable solutions to this ongoing crisis.

The research problem that the researcher has identified is based on the notion that the recidivism of drug offenders, including the users and abusers of drugs, has been rising and he conjectures that this could be due to a failure of the justice/correctional mechanism as will be explored through the research hypothesis that he adopts, which is set out in the third chapter of this research.

The universal penal system and standard of adjudicating penal offences is centred on harsh punishments for recidivists than on first time offenders.ⁱⁱ Despite the continued application of this system of castigation, philosophical justification for such impositions has found little traction among scholars and proponents of retributive justice. The central and rudimentary basis for the promotion of this archetypical system of adjudication and judgement is the mere fundamental notion that repeat offenders deserve punitive punishment in proportion to the crime, which in the case of recidivists is mere repetition. At the core of this study lays the resolving of and identifying the ratio between, and contribution of, retributive penal mechanisms on the increase in recidivists and the research will identify and peruse through the plethora of reflexive research and studies dictated in the direction of the research questions sought to be answered by the researcher.

Sri Lanka's Drug Epidemic

Commentators and critics such as Kumarasinghe (1988: 283-284) were of the view that the predominant drugs used in Sri Lanka are heroin, cannabis, hashish and opium, with heroin being the wider used drug. In addition, he also views tourists as being responsible for the introduction of novel drugs and the wider scope of use.

The researcher views Kumarasinghe's research as being relative but also erred in its findings of the introduction and wider scope of distribution and use. The rationale for this stems from Kumarasinghe's findings which suggest rebel tigers (separatist terrorist organization in Sri Lanka) engaged in the trafficking of drugs as a mechanism for financing militia.

There is a notion amongst psychologistsⁱⁱⁱ that a growing number of rehabilitants of war, engage in use of recreational drugs such as cannabis and hashish as a means of both enjoyment and trade. From a cohort of 100 persons (aged 16-34), the aggregate average recreational user of cannabis from the cohort (this is on an aggregate of users), of which one (1/1) 16-year-old, two (2/9) 17-year olds, two (2/8) and six (6/9) 19-year olds stated that the usage of cannabis and/or hashish was pure recreational and not addictive to the extent of dependency. The aggregate average trafficker of cannabis and/or hashish from the cohort (calculated among the remainder of rehabilitants who were subject to rehabilitation on possession in the absence of drug tests to prove usage) amounted to seventy persons, all of whom affirmed the ease of trafficking as a means to quick money at the risk of menial and/or insignificant penal action.

Sri Lanka's history has an embedded use of recreational drugs for medicinal purposes such as Ayurveda (Uragoda, 2000) which in its own ethics of practice going back to the first century have mechanisms of preventing the exploitation of use, and the same can be viewed as being an archaic mechanism to reduce and/or prevent recidivism among practitioners of the profession.

Jayasuriya finds that the colonial powers regulated the use of opium as mechanism of revenue, with post independent Sri Lanka thereafter having to enforce measures to "scale down" the use of opioids, cannabis, hashish and other psychotropics.

Drug Offences and Offenders in Sri Lanka

At the core of the penal enactments pertaining to drug related offences lays the *Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929* which defines the cortex of punitive offences as follows;

Section 52 of the act states that "No person shall obtain or have in his possession any dangerous drug" - this provision saturates legal definition providing that a dangerous drug is an illicit drug, thereby the possession of which in itself is an offence, the provision also provides under subsection 1 - an offence for users of such drugs, thus amalgamating the possession and use as either one offence or two where so it occurs.

Section 53 of the act prohibits manufacturing and/or carrying on any process that aide in the manufacture of the prescribed dangerous drugs.

Section 54 of the act prohibits 'administering, selling, supplying, or procuring or offering to sell, supply, or procure any dangerous drug to or for any person, whether in Sri Lanka or elsewhere, or advertise any such drug for sale, except as permitted by, or otherwise than in accordance with, the provisions of the Ordinance and a licence in that behalf from the Director'. -This provision can also be seen as an extension/limb of the prohibition brought about under *Section 53*.

Section 54A (brought by a subsequent amendment) imposes the death penalty or life sentence for persons found guilty of manufacturing and/or trafficking heroin, cocaine, morphine or opium. The terms "manufacture" and "trafficking" are defined as follows:

- "manufacture" in relation to a dangerous drug includes any process of producing such drug and the refining or transformation of one drug into another;
- "traffic" means
 - a. to sell, give, procure, store, administer, transport, send, deliver or distribute;
 - b. or (b) to offer to do anything mentioned in paragraph (a).

Section 78 of the Ordinance imposes the penalty on persons guilty of commission of an offence excluding the offence defined under *Section 54A*, by providing that;

- a. “on summary conviction by a Magistrate, to a fine not less than one thousand rupees and not exceeding ten thousand rupees or to imprisonment of either description for a period not exceeding five years or to both such fine and imprisonment”;
- b. “on conviction before the High Court, to a fine not less than ten thousand rupees and not exceeding twenty-five thousand rupees or to imprisonment of either description for a period not less than six months and not exceeding seven years, or to both such fine and imprisonment”.

While the death penalty has been defuncted in Sri Lanka, the life imprisonment has in effect been imposed on persons found guilty of manufacturing heroin, cocaine, morphine and/or opium while the same punishments have been imposed on persons found guilty of trafficking, importing or exporting and/or possessing a minimum amount of 5 grams of heroin and/or 3 grams of morphine and/or 2 grams of cocaine or and/or 2 grams of heroin.

II. RESEARCH PROBLEM

This research identified that the recidivism rate of drug abusers was much higher than the other set of criminals. In the study of this research has focused the research problem as “The incidence of recidivism amongst persons who were convicted of drug related offences and have been subjected to the domestic retributive justice mechanism has been proportionately steep in Sri Lanka.”

Objectives

The research objectives of the research that the researcher carried out is set out as follows;

- To pinpoint if it is indeed the failure of the domestic retributive justice mechanism that leads to the incidence of recidivism amongst drug offenders in Sri Lanka.
- To identify the characteristics of drug offenders in Sri Lanka.
- To determine the efficacy of the domestic retributive justice mechanism in Sri Lanka.

III. METHODOLOGY

In order to conduct this study, the research design that has been used by the researcher is an exploratory research design. The kind of research that was carried out demands the researcher to adopt such research design because the research is of the nature of an exploration. This is because the researcher sought to explore in as much depth as possible efficacy of the existing justice mechanism in Sri Lanka in mitigating or eliminating recidivism amongst drug offenders in Sri Lanka. The data collected from the primary and secondary research lead the researcher to gather both qualitative and quantitative data from the research.

Research Hypothesis

The hypothesis used in the study is “the increased incidence of recidivism amongst drug offenders is due to the failure of the attributive justice mechanism in Sri Lanka.” The research hypothesis that the researcher adopted was based on the research problem that was identified and was a directional hypothesis.

Sample of the study

The sample of the study was selected from the inmates who were serving their prison sentences for offences related to the drug offences at Mahara prison in Sri Lanka. The researcher limited the sample group of inmates to one hundred participants and ten prison officers. In addition to the above, a sample group of ten officers of the Prisons Department were obtained in order to compute the relevant outlook from the reverse perspective. The survey was conducted with ten voluntary officers of the Department of Prisons attached and assigned to the Mahara prison.

This study used convenient sampling technique in conducting the research. The convenient sampling method was the most suitable sampling method as it will allow the researcher to gather the required data from one hundred participants in the order that they presented themselves and made themselves available for the study. The convenient sampling of the group of ten prison officials was selected on nomination by an officer of the Department of Prisons. The analysis of the data obtained was done in such a manner where it utilized both a text-based analysis whilst also where possible drew from a graphical analysis to ensure easier assimilation of better presented findings.

Data Collection Method

In the study, researcher used two methods of data collection namely the primary and the secondary data collection methods to gather primary and secondary data. The researcher gathered data from unstructured interviews as a series of open-ended unstructured questions in no particular order. The reason of the research adopted such an interview method was due to the sensitivity of the subject matter researched and the greater sensitivity of the area on the sample that was selected.

The analysis of the data obtained was done in such a manner where it utilized both a text-based analysis whilst also where possible drew from a graphical analysis to ensure easier assimilation of better presented findings.

IV. DISCUSSION AND FINDINGS

Offences Related to Drugs

A cursory study of the offences related to drugs will indicate that the enforceable punishments for same vary from petty fines to death/life imprisonment. While possession of prescribed amounts of cannabis are by and large considered petty crimes, the possession, manufacture and/or trafficking of (prescribed and quantified) quantities of certain drugs such as

cocaine and heroin (2g+) for possession and intention to distribute or export will be subject to the consideration of the circumstances and quantity.

The *Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929* provides both the definition of a dangerous drug, while criminalizing (and thereby making it an offence) the possession of such prescribed drug. The ambit of *Sec.52* therein provides a supplementary offence to what may be the dominant offence, i.e. A person who manufactured or possessed with the intention to distribute or a person for his own consumption procures a prescribed dangerous drug are both culpable under the said provision. In that, a first-time offender charged for possession (who had for his own consumption procured same) would be guilty of an offence which could have been dealt with summarily under a more restorative juridical regime.

The first of the above two examples (a person who manufactured or found with intention to distribute), will be brought under the provisions of *Sec.53* whereby the manufacturing of such a prescribed drug has been made an offence. *Sec.54* complementing the preceding provision, criminalizes the procuring, selling, administering and supplying to or procuring for any person (*Sec.54A* - introduced stringent punishment [Life imprisonment/Death] on prescribed crimes pertaining to cocaine, heroin, morphine and/or opium). These offences give rise to culpability of an offender under three different offences, that being under *Sec.53* for the manufacture of such a drug, *Sec.54* for its sale, intention to sell and/or procuring same together *Sec.52* for the possession of such drug. It goes without saying that the offence of manufacturing cannot take place without the offence of possessing, (while the offence of intention to distribute is subject to the facts of the case) accordingly the economic factor coming into play draws the notion that a first-time offender found guilty of one of two crimes will by virtue of *Sec.52* be indefinitely culpable of two crimes, and may either be ordered to pay a higher fine and/or serves a higher sentencing in accordance with the provisions of *Sec.78* (which defined the sentencing) and accordingly which may be found to be incapable of making or defaulting on same and therefore incarcerated without due regard to a remedy to prevent recurrence of same resulting from the psychosocial stigma of society if it is able to pay the fines, and/or the psychological interplay affecting the psyche while incarcerated .

The above-mentioned statutory provisions in light of other instruments carrying out further culpability to connected and related with crimes.

As discussed below, the law on drugs require sufficient reform to incorporate such provisions to the local framework.

Causes of Drug Offences

From a psychosocial perspective, critic such as Mendonsa (Riordan, 2017) view that addiction increased prevalence of committing offences (while not specifying, indicates same as

being offences at large. However due regard has been given to interconnected crimes. [*i.e. Possession, distribution, manufacturing and trafficking*]) Pertains to psychological factors (i.e. Depression, dependency disorders and addiction).

It must be recognized that the indicative research conducted in this regard points out that upward of 82% (+7% [no formal education] +32% [5th Standard] + 43% [8th Standard]) of incarcerated convicts are educated up to or below the 8th standard, while 50% percent were unemployed. This indicates a correlation of commission to formal education.

A further correlation can be found between the social background and the drugs used, in that, an increased percentage of Heroin use (64%) can be seen. Heroin is by and large considered a 'poor man's drug', this is also evident as only 3% of convicts state 'other' for the drugs used (indicatively found to be three uses of cocaine) and seven uses (7%) convicted for opium related offences, while 26% of committals were with regards to cannabis/ganja, which is the most common gateway drug. These facts further buttress the presumption correlating education and/or social background to the use of drugs, which provides due direction to the cause of use, and thus in turn the cause of related offences.

A cursory analysis of the survey questions shows 62% being convicted for life as a first punishment with the rate of life convictions reducing among the reconvicted offenders and recidivists. This indicates due to purely statistical reasoning (i.e. the number of repeat offenders serving life reduce in ratio to the high number serving life for a first offence) and because of mitigatory sentencing for lesser degree offences of the same nature. While not all have been charged with distribution and manufacturing (74% and 62% respectively) all have been charged with possession, this supports the researcher's notion expressed elsewhere in this research study pertaining to convictions under the *Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929*. However, the said statistics also contradict the psychosocial regime (discussed above) pertaining to first time offenders. The research proposes this view in light of the basis that only 62% of convicts claimed to have committed their first offence due to 'Economic/Financial difficulty/incentive' and 11% and 36% (respectively) due to 'Recreation and Addiction'. However, the increase in second- and third-time offenders sees an increase in these figures to 100%, 28% and 62% (respectively).

The research views that the predominant crime remains possession (i.e. one cannot be found guilty of Distribution and/or manufacturing without being in possession). In light of the said fact, and the statistical information discussed herein and elsewhere, the results of which depict other variable factors including the reasons for the commission of the related offence and the repetitive offence, a presumptive conclusion could be drawn that the reason for same remains predominately and fundamentally the financial incentive, followed with a relatively distant second reasoning (for first

time offenders) being addiction and thirdly recreation. The increase in addiction and recreational use could be seen among the recidivists.

It is imperative to recognize that drug offences are committed largely for economic reasons with due regard to the paradigm shift in the socio-economic culture against the backdrop of the psychosocial aspects such as addiction, both fundamentally caused by a failure of society to either regulate or create more awareness to prevent at a grassroots level, the said offences.

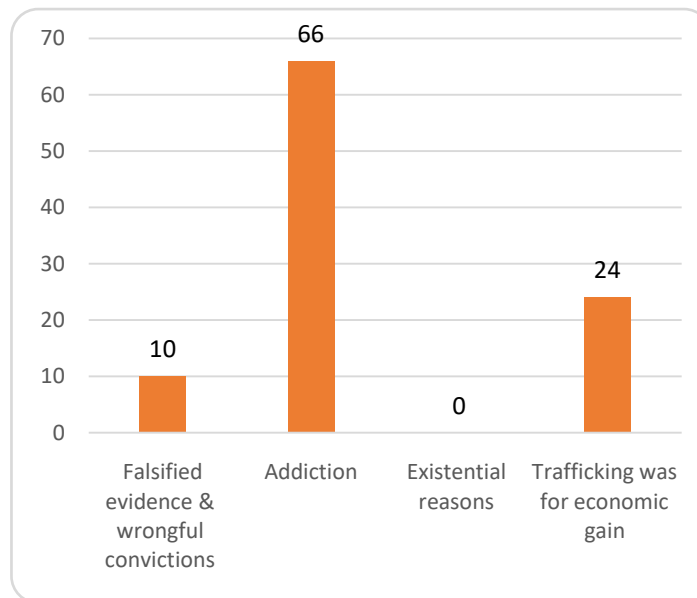
V. FINDINGS OF THE STUDY

As discussed above the convenient sampling technique was used to obtain the primary data of this research study.

The research was carried out by way of two surveys of questionnaires among two focus groups relevant to this research study. One focus group was one hundred inmates while the other focus group was ten Prison Officers.

The research was faced with the dilemma of the apocalyptic new socio-economic environment resulting from the novel Corona virus diseases (COVID-19 virus) and deviate from an interview-based research to one centred around opportunity sampling by way of surveys.

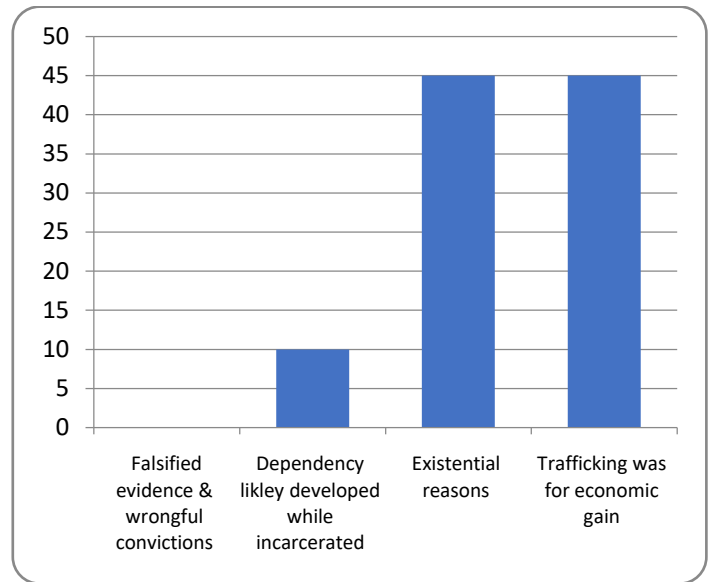
Figure 1: Recurrence of drug related offences (Inmates)



Source: Field research 2020

The results computed in *Figure 1* were conducted among a group of one hundred participants. The primary data of inmates found that upward of 10% stated that the reason for reoccurrence of crimes is based due to falsified evidence, while 66% stated the reason being addiction, while 24% of the inmates were found to be trafficking for economic reasons via gathering information through interview.

Figure 2: Recurrence of drug related offence (Officers of the Department of Prisons)



Source: Field research 2020

The survey results depicted in figure 2 were conducted with ten voluntary officers of the Department of Prisons attached and assigned to the *Mahara* prison. The results of this survey have been analyzed elsewhere in this research study.

In furtherance of the computation of the disparate views pertaining to recurrence, the primary data of the prison officials was examined, whereby it was found that 0% stated that their belief for the reason of reoccurrence of crimes was due falsified evidence and wrongful convictions, and 10% stated that dependency would most likely develop while incarcerated, and 45% stated it was due to existential reasons and 45% were also found in a favour of the fact that trafficking was for economic gain.

Table 1: Age distribution of drug offenders

Age group	
Age Range	Percentage
21- 30	25
31- 40	25
41 – 50	25
51 – 60	15
60+	10

Source: Field research 2020

According to table 1, the highest percentage of drug offenders is 25% under the age category of 21- 30, 31- 40 & 41 – 50. The Least percentage of drug offenders under the age category of 60+ and it indicates 10%. As per the findings of field research middle-aged (21- 50 aged people) drug offenders’ recidivism rate is higher than 60+ aged drug offenders.

Table 2: Civil status of drug offenders

Civil Status	
Status	Percentage
Married	51
Unmarried	32
Divorced	15

Source: Field research 2020

According to table 2, the majority of offenders have been committed by married people. The Least percentage of drug offenders under the category of divorced and it indicates 15%. It is observed that the category of married people commits drug offences due to financial difficulties, responsibilities related to their family and the mental stress that result to do so.

Table 3: Ethnicity percentage of drug offenders

Ethnicity	
Race	Percentage
Sinhala	50
Tamil	25
Muslim	20
Others	05

Source: Field research 2020

According to table 3, the majority of offenders are Sinhalese and it indicates 50% of the sample. Considering these figures other ethnic groups it was identified Tamil are 25%, Muslims are 20% and other ethnic groups 05%.

Table 4: Study level of drug offenders

Education Qualifications	
Level of Study	Percentage
No formal education	07
5 th Standard	32
8 th Standard	43
Ordinary Level	14
Advanced Level	04

Source: Field research 2020

According to the table 4, highest percentage of drug offenders belongs to the level of study of 8th Standard and it indicates 43%. The Least percentage of drug offenders belongs to the level of study of advanced level and it indicates 4%. The percentage of drug offenders with no formal education is 7%. As per the field research the amount of the offenders with education level 5th standards and 8th standards are 75% from the total number of offenders. According to the findings of the field research majority of the offenders have lack and poor

study level. There is no proper education policy in Sri Lanka. Lack of education lead them for committing crimes and can be easily engaged with drug related offences.

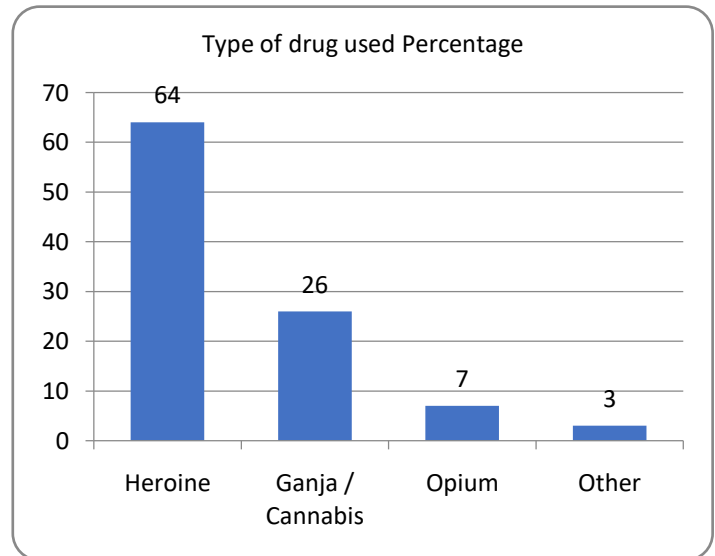
Table 5: Employment Sectors (Pre Incarceration) of drug offenders

Employment (Pre-Incarceration)	
Sector	Percentage
Government sector	20
Private sector	15
Self employed	15
Unemployed	50

Source: Field research 2020

As per the table 5, the majority of drug offenders are unemployed. There are 20% of drug offenders under the government sector employees (pre-incarceration). However according to the field research, it shows that the higher level of drug offenders who recidivists have low level of social standards. Person who does not reach the higher level of education and they did not get through the Ordinary level examination or other compulsory examinations for higher education become useless people to the society. When there is a proper path to link those people on vocational training might not commit drug related offence to survive.

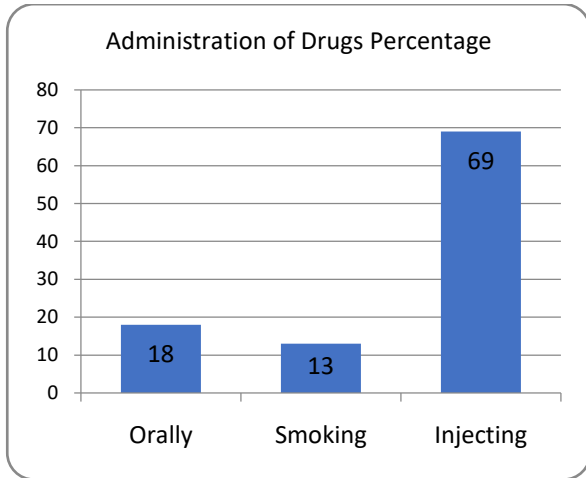
Figure 3: Types of drugs used by drug offenders



Source: Field research 2020

As per the figure 3, the majority of drug offenders are used heroine, second place is belonging to cannabis & third place is belongs to opium. Considering these facts majority drug offenders are used heroine. Drug users in Sri Lanka get their supply of drugs from the underground drug market, which has its internal and external sources. Heroin is found to be the most commonly used drugs in Sri Lanka.

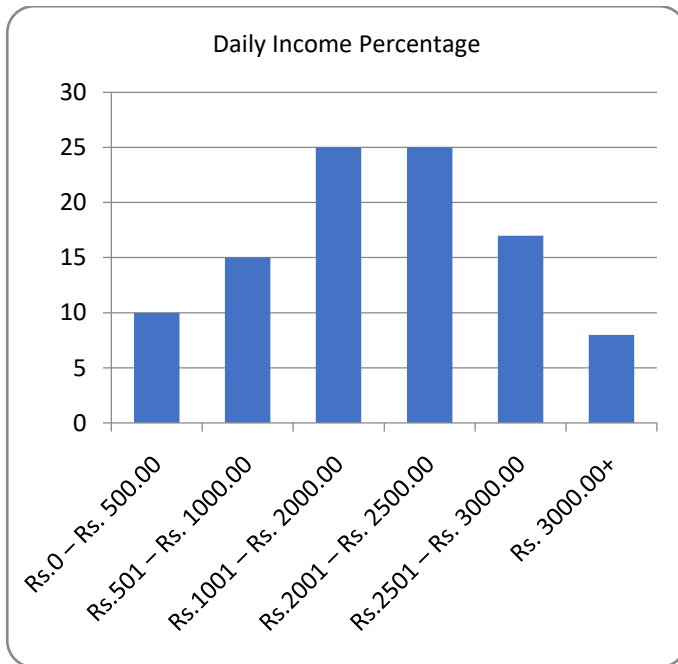
Figure 4: Method of drug administration of drug-related offenders



Source: Field research 2020

According to the figure 4, the majority of drug offenders obtain the drug by injection. Considering the facts of the field research researcher, it was observed that this method is a very easy method to obtain drugs. Therefore, it was revealed that the method was the most commonly used method by drug offenders.

Figure 5: Analysis of daily income of drug offenders

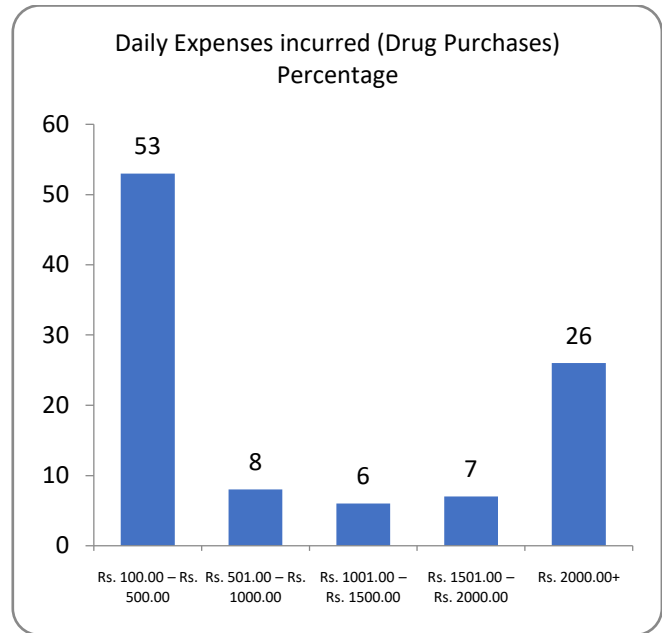


Source: Field research 2020

According to figure 5, the majority of drug offenders' income ranges are Rs 1001 – Rs. 2000.00 and Rs.2001 – Rs. 2500.00 and it indicates 50%. The least daily income percentage of drug offenders is 8% and it indicates the income category of Rs.3000.00+. Considering the above facts of the field research

it shows lower - income generating people are committing drug - related offences.

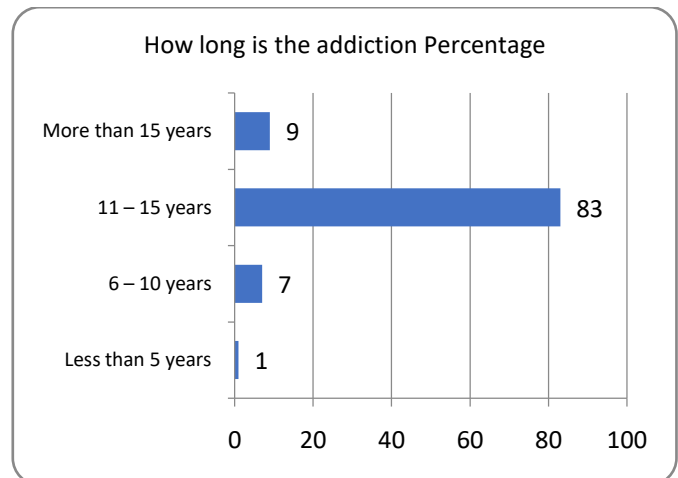
Figure 6: Daily Expenditure distribution of drug purchase



Source: Field research 2020

According to the figure 6, the majority of drug offenders' daily expenses for drug purchase within the range of Rs 100 – Rs. 500.00 and it indicate 53%. Considering the above facts in field research it was observed that the daily cost of purchasing drugs ranges from Rs.100 /- to Rs.500 /-. It seems that the amount of money spent daily to buy drugs can be earned by doing a daily job. Furthermore, drug traffickers and drug offenders have been able to obtain drugs at very affordable prices by packaging and selling them in very small packages. Therefore, it can be seen that drug use has increased.

Figure 7: Drug consumption period



Source: Field research 2020

Most of the drug offenders were drug-addicted between the period of 11 and 15 years. It is revealed that there is no proper mechanism to rescue drug-related offenders from abusing drugs. Thus, it is clear that drug addicts are using more drugs instead of trying to get rid of drug addiction. According to the field research considering above facts it is revealed that the failure of retributive system

This survey was used to understand the causes of drug use and the effect of drug addiction on family members. Most of drug offenders were introduced to drugs by their friends and their family members. In addition, it has been observed that the lifestyles, living and social conditions, homes and places where they lived, activities and habits regarding with their own gangs and family. When observing the place of residence, it was identified that most of them are living in very small houses like slums & flats with as minimum facilities as possible. These places are very small but it is a place where a large community of people is living. These places are centres of distribution for drugs and other crimes, and the people who live in these places are under pressure from their colleagues to follow this criminal way of life and to be constantly led by society. It affects their emotions. These people received recognition in their society based on how long they have been detained and how long they have spent in prison. Criminals tend to commit more crimes as they become more and more respected in their society. When many drug offenders are imprisoned several times, they treated as heroes in their society. These people do not use their free time effectively and the majority of illegal activities have been practised in their free time. They spend their free time with their gangs by smoking, getting drunk or using drugs, and also planning future illegal activities. They do not have any proper methodology for resolving disputes and they solve disputes through actions such as fighting. Furthermore, it can be identified that people have turned to it because they can easily earn money by drug trafficking.

Probability of Recidivism in Sri Lanka

The standard or theorized rule of norm indicates those recidivists are subject to higher sentences/punishments in comparison to their first offence (of the same nature). While this theory has been suggested and developed by scholars such as Cunliffe (2017) the passive notion therein is supported by the survey results conducted herein, in that the recidivists, as opposed to first time life/death row inmates were found serving longer sentences for their second and/third offence (upward of 23% increase.) The endemic policy rationale seeking to provide justification for increased punishment among recidivists cannot (in light of the statistical data pertaining to increased sentences among recidivists) be justified by retributive theories stating (Roberts, 2012:468).

Although critics such as Posner deliberate and justify the grounds for the punishment theory among recidivists on the basis of greater applicability of deterrence through punishment,^{iv} it is purely and statistically frivolous. As

discussed above (and in detail below) the retributive rates present among the primary cohort are indicative of a failure in the present mechanism (be it independent or hybridization of the retributive and restorative mechanisms)

It is also evident that the current policy trend of retributive justice being capable of reducing recidivism is unfounded, baseless and without passive or tacit validation. The research results in its totality and in correlation to statistical relevance provide the notions that penal sanctions have not proved to corroborate the prevention or reduction of recidivism and/or recurrence of offences by offenders.

It is also noticeable that the increase in percentage of secondary convicts in comparison to the crimes committed depicts a lack of suppression caused by the prevailing justice mechanisms, accordingly it is palpable that any proposition stating that recidivism is/can be curbed is without merit.

Accordingly, it is imperative to note that in the circumstances the likelihood of recidivism and recurrence of offenders to drug related (if not other) crimes will be implicit and increasingly present among the spectrum.

VI. CONCLUSIONS

While the *praecipuum* of this research study has been dealt with in the previous chapters and it is established lore and evident from the prognosis herein that the principal statute pertinent to the research puzzle are the *Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929*. Therefore, the researcher will discuss the absence of secondary legislation ancillary to *Act No.17 of 1929*, which has proven fatal.

During the handing down of a recent order of acquittal on a technicality in the Magistrate's Court of Fort, the learned Magistrate concluded his obiter statement on the note that 'substances which are by and large illegal the world over (developed after the enactment and amendments to *Act No.17 of 1929* among other instruments) have fallen outside the purview of the laws of Sri Lanka and accordingly permit users of such substances to permeate through such loopholes, and the said substances amounting to less than 1% of detections due to geo-limitations in its placement prevent a caucus for law reform pertaining to same.

This research views the lacuna of the relevant law as an indication of a factual and procedural fault in the framework, that may also be a contributory factor in the increase in recidivism, in that, for example, a person who can manufacture/procure/develop and subsequently traffic and/or use same (e.g., psychedelic mushrooms) is arrested under the provisions of the existing law, and therefore becomes a first time offender, who, for the reasons mentioned herein finds himself subject to the loophole of the framework, which prevents his prosecution and grants him a discharge/acquittal (Hartney, 2020). This may then lead to an indulgence in the economic and financial aspect of the drug trade, which amounts to more than 64% of first-time offenders and more than 100% for recidivists found guilty after a first-time

punishment. This supports the directional notion of the research hypothesis and allows a middling conclusion remark on the impact of this aspect on the variables of this research.

Therefore, it is apt for this research to propose and hold the view that the legal framework presently in place has not created a sufficient ratio of provisions to deal with reducing recidivism; it has more so taken an archaic and intellectually backward stance of persecution, which has now become its focal point.

The Sri Lanka Police, together with its specialized agencies/departments, are the custodians of law and order and the enforcers of penal legislation pertaining to the contentious crimes, *among other things* dealt with herein.

The primordial *prima facie* and inferred rule-of-thumb pertaining to criminal prosecution in Sri Lanka (drug offences or otherwise) relays to the justification of the retributivism contained therein. The rationale for prosecution and subjecting an individual to the penal provisions is dependent on the punishment for committal.

The depth of the criminal mechanisms lies not shallower than the archaic views from which they are birthed, being that of the punishment theory (Brooks, 2012). The unified punishment theory (the most consistent theory therein) is founded on linking the retributive, deterrence and rehabilitative schools of thought in light of penal sanctioning of a criminal (Thomas, 1995:1).

Furthering on this theory, Murphie (McGeer; Friederike, 2017) views that proportionality should play a pivotal role in the punishment of a recidivist, accordingly both the gravity of the offence and the level of culpability being the factors and not merely on account of recurrence. It would be in polarity to hold this view as unnecessary because anything to the contrary would be anti-proportionality.

While the reduction if not prevention of recidivism is the ultimate goal, Murphie's view contends that past crimes should not play any role, and while critics such as Fletcher (2000:26) agree with this view polarity can be seen in the works of Von Hirsch (1981), wherein she proposes that previous offences have no bearing on a subsequent offence.

This research finds rationale-solace in Hirsch's notion, in that, the consideration of a previous offence in passing judgement over a current offence would create an inherent bias and may cloud the ability to pass a judgment that is proportionate to the incumbent offence, accordingly the judgement would be passed on the entirety of the perpetrator's criminal history.

This research concludes that the existing penal mechanisms promote the retributive culture to the extent that it plays on Lee's view of the notice theory (Youngjae, 2009) wherein he proposes that the nexus between a recidivist and culpability can be drawn from the experience required to carry out a second offence. The research views that the interplay between

prior crimes and punishment for a subsequent crime prevents impartiality in the passing of a reasonable punishment.

In spite of the existence of a strong and pseudo-effective criminal justice system that is at the forefront of the retributive mechanism/framework, critics such as Frank de Silva, find that the criminal justice system does not in fact work as a system and that the objectives of the criminal justice system are uncertain. He goes onto further support the (public) notion that corruption is much prevalent in the system, and that this causes to a great extent a compounding of the rights of an accused (Silva, 2019: 25-31).

This research considers de Silva's remarks in light of the research conducted here in wherein the writer feels the questions answered with regard to falsified evidence leading to convictions proved to be in the tenth percentile among inmates while no officers supported this view.

The results of the survey of prison officers, is in contravention to the public secrets pertaining to the retributive system. This view is expressed in light of (and in addition the research conducted in this regard) the case of *Tissa Kumara v. Inspector Premala Silva* wherein the Supreme Court found an inspector who caused bodily harm on an accused in order to draw out confessions and admissions guilty of a violation of rights. In an environment in which bodily harm is used by authorities to draw out confessions (of among other things crimes that were not committed), it is palpable that false pretexts and falsified evidence to aide in arrests and prosecutions of perpetrators is a common practice among law enforcement agencies.

It is noteworthy that such restorative mechanisms as currently in place (ad-hoc or otherwise) seem to be placed in such an environment as to be negated by the weight of the operative retributive mechanisms.

The research proposes that despite the presence of ad-hoc and trivial restorative mechanisms/framework currently in place the prevalence of retributive framework/mechanisms over that of the said restorative framework and mechanisms is undoubtedly the most predominant contributor.

VII. RECOMMENDATIONS

The research settles on the notion that recidivism is the result of a fracture in the criminal justice system whereby retributive justice and its mechanisms are at the forefront of a prosecution culture that favours the punishment theory, and in that the state framework and law enforcement agencies strengthen at all cost the retributive framework as opposed to the restorative framework.

Accordingly, in light of the breadth and width of the study conducted herein and the hypothesis therein, the researcher has identified possible areas in need of reform, reorganization and restructure to reduce recidivism.

The research views the below-listed recommendations as being mandatory in pursuance of reducing recidivism;

- a. Social awareness on the criminal justice system and sanctions therein.
- b. Informing susceptible sects of society, the implications of committal.
- c. Creating a dialogue on the rights of suspects and accused individuals.
- d. The necessity for identifiable reform in promotion of restorative mechanism.
- e. Application of a structured rehabilitation program for first time convicts.
- f. Reintegration programs prior to release of convicts.
- g. Creation of post-incarceration job bank.
- h. Applicability of an efficient parole monitoring system.
- i. If such mechanisms in furtherance of the above recommendations are materialized, one can hope to witness the birth of the first spawns of an altruistic society.

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